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CASES AND MATERIALS ON THE LAW AND PRACTICE OF DIVORCE IN CANADA

VOLUME 1

Julien D. Payne

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PREFACE

The Divorce Act, 1968 reflects a new legal philosophy in resolving the social problem of marriage breakdown. It seeks to achieve two basic objectives. Certain provisions are designed to forestall family disintegration and seek to promote reconciliation between spouses who encounter disharmony in their marital relationship. Other provisions have the function of promoting relief through judicial dissolution of marriage where the spouses are irreconcilably estranged and the marriage has irreparably broken down.

The Divorce Act, 1968 introduces an exclusive divorce law operating throughout the Dominion of Canada. The principal changes effected by the Act relate to the extension of the grounds for divorce, which are now premised in part on the concept of the matrimonial offence and in part on the concept of permanent breakdown of marriage; revision of the law of collusion, connivance and condonation; elimination of the traditional discretionary bars to divorce; the introduction of new bars applying to the divorce grounds requiring proof of permanent marriage breakdown; the formulation of revised rules governing jurisdiction in divorce proceedings and recognition of foreign decrees; the definition of obligations whereby counsel and the courts must examine the prospect of reconciliation being achieved between the parties to divorce proceedings; and the imposition of mutual support obligations upon the spouses. In view of these radical changes, precedents established under the former Canadian divorce regime must now be regarded with circumspection. Supplementary guidance as to the interpretation of the Canadian legislation may, however, be obtained from decisions in England, Australia and New Zealand since the Divorce Act, 1968, is, in part, modelled upon legislation in these countries; see e.g. Matrimonial Causes Act (Eng.), 1965, Matrimonial Causes Act (Aust.), 1959, and Matrimonial Proceedings Act (New Zealand), 1963. The inevitable dearth of Canadian authority on the recent legislation necessitates frequent reference to decisions from these jurisdictions but students and practitioners who seek to interpret and evaluate the provisions of the Canadian legislation must be cautioned against encumbering the Canadian legislation with foreign authority.

Julien D. Payne
(Dec., 1969)

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